

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

<b>DIRECTV, INC.,</b>	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 5:03CV00079</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>BENJAMIN SWISHER,</b>	)	<b>By: Samuel G. Wilson</b>
<b>Defendant.</b>	)	<b>United States District Judge</b>
	)	

Stemming from the alleged pirating of subscription satellite television signals, DIRECTV seeks damages and injunctive relief against Benjamin Swisher on four counts involving the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521, *et seq.*, the Electronic Communications Policy Act of 1986, 18 U.S.C. §§ 2510, *et seq.*, and unlawful conversion under Virginia state law. Swisher moved to dismiss the complaint in its entirety for failure to state a claim upon which relief can be granted, and this court referred the motion to the U.S. Magistrate Judge. Pursuant to 28 U.S.C. § 636 (b)(1), the magistrate submitted his proposed findings and recommendations to this court concluding, essentially, “[b]ecause DIRECTV alleges no facts other than the mere purchase of a decryption device, there is no factual basis in the complaint sufficient to support the bald assertion that Swisher intercepted or used any DIRECTV signal in violation of federal or state law.” Accordingly, the magistrate recommended that this court grant Swisher’s motion and dismiss the complaint without prejudice. DIRECTV then filed timely objections, and this court now reviews the magistrate’s findings de novo. 28 U.S.C. § 636 (b)(1)(C).

This court sustains the objections to the magistrate’s proposed findings and recommendations because DIRECTV complied with the liberal pleading requirements of Federal Rule of Civil Procedure 8(a). In order to state a claim, plaintiffs must “allege facts sufficient to

state the substantive elements of their claim.” Iodice v. United States, 289 F.3d 270, 280 (4 th Cir. 2002). Here, although the magistrate correctly concluded that DIRECTV must prove that he used or intercepted or assisted others in using or intercepting a satellite signal, see DIRECTV, Inc. v. Treworgy, – F.3d –, 2004 WL 1317849 (11th Cir. 2004) (holding that the Electronic Communications Policy Act of 1986 does not create a private right of action against one who merely possesses a device to pirate satellite signals and questioning whether a “case” or “controversy” would exist by “[p]ossession of a pirate access device alone”), DIRECTV is not required to prove interception or use in the pleadings. Rather, after reviewing the magistrate’s proposed recommendations and conclusions and DIRECTV’s objections to that report, it is apparent that in the light most favorable to the plaintiff, DIRECTV adequately stated their claims in short, plain statements by alleging sufficient facts to support the allegation that Swisher used and intercepted, or assisted others in using and intercepting, the pirated signals. Accordingly, the court sustains DIRECTV’s objections to the magistrate’s report.

**ENTER:** This \_\_\_\_\_ day of June, 2002.

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UNITED STATES DISTRICT JUDGE

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<b>DIRECTV, INC.,</b>	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 5:03CV00079</b>
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<b>v.</b>	)	<b><u>ORDER</u></b>
	)	
<b>BENJAMIN SWISHER,</b>	)	<b>By: Samuel G. Wilson</b>
<b>Defendant.</b>	)	<b>United States District Judge</b>
	)	

After thoroughly reviewing the proposed recommendations and conclusions submitted by the U.S. Magistrate Judge and DIRECTV's objections to that report, it is **ORDERED** and **ADJUDGED** that DIRECTV's objections are **SUSTAINED**.

The Clerk of the Court is directed to send certified copies of this Order and the accompanying Memorandum Opinion to the counsel of record for the plaintiff and the defendants.

**ENTER:** This \_\_\_\_ day of June, 2002.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE